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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARIA TREJO DE ZAMORA and,
ISELA GOMEZ-DEHINES

Case No.: 2:12-cv-01357-MMD-CWH

Plaintiff.

VS.

AUTO GALLERY, INC.

Defendant(s)

MOTION FOR SUMMARY JUDGMENT

Plaintiffs, MARIA TREJO DE ZAMORA and ISELA GOMEZ-DEHINES, by and through their counsel, JILL C. DAVIS, Esq. and Michael R. Joe, Esq. of the Legal Aid Center of Southern Nevada, Inc., for their Complaint against Defendant, AUTO GALLERY, INC., allege and state as follows:

I. INTRODUCTION

1. This Complaint arises out of the sale on credit of a 2004 Nissan Xterra, (VIN 5N1ED28T44C66010) from Defendant, AUTO GALLERY, INC., to Plaintiffs, MARIA TREJO DE ZAMORA and ISELA GOMEZ-DEHINES, on August 17, 2011. During the course of the August 17, 2011 transaction and thereafter, Defendant violated numerous state and federal statutes, engaged in fraudulent misrepresentation and converted Plaintiffs' personal property.

1 **II. LEGAL STANDARDS**

2 Summary judgment is appropriate when there is “no genuine dispute as to any material
 3 fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). Summary
 4 judgment avoids unnecessary trials in cases in which the parties do not dispute the facts relevant
 5 to the determination of the issues in the case, or in which there is insufficient evidence for a jury
 6 to determine those facts in favor of the nonmovant. *Crawford-El v. Britton*, 523 U.S. 574, 600,
 7 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–50,
 8 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d
 9 1468, 1471–72 (9th Cir.1994). At bottom, a summary judgment motion asks whether the
 10 evidence presents a sufficient disagreement to require submission to a jury.
 11

12 The principal purpose of Rule 56 is to isolate and dispose of factually unsupported claims
 13 or defenses. *Celotex Cop. v. Catrett*, 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265
 14 (1986). Thus, the rule functions to “ ‘pierce the pleadings and to assess the proof in order to see
 15 whether there is a genuine need for trial.’ ” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*
 16 *Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Fed.R.Civ.P. 56(e)
 17 advisory committee's note on 1963 amendments). Procedurally, under summary judgment
 18 practice, the moving party bears the initial responsibility of presenting the basis for its motion
 19 and identifying those portions of the record, together with affidavits, if any, that it believes
 20 demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323; *Devereaux*
 21 *v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.2001) (en banc). If the moving party meets its burden
 22 with a properly supported motion, the burden then shifts to the opposing party to present specific
 23 facts that show there is a genuine issue for trial. Fed.R.Civ.P. 56(e); *Anderson*, 477 U.S. at 248;
 24 *Auvil v. CBS “60 Minutes”*, 67 F.3d 816, 819 (9th Cir.1995).

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A clear focus on where the burden of proof lies as to the factual issue in question is crucial to summary judgment procedures. Depending on which party bears that burden, the party seeking summary judgment does not necessarily need to submit any evidence of its own. When the opposing party would have the burden of proof on a dispositive issue at trial, the moving party need not produce evidence which negates the opponent's claim. *See e.g., Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 885, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990). Rather, the moving party need only point to matters which demonstrate the absence of a genuine material factual issue. *See Celotex*, 477 U.S. at 323–24 (1986). (“[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers to interrogatories, and admissions on file.’ ”). Indeed, summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *See id.* at 322. In such a circumstance, summary judgment must be granted, “so long as whatever is before the district court demonstrates that the standard for entry of summary judgment, as set forth in Rule 56(c), is satisfied.” *Id.* at 323.

To defeat summary judgment the opposing party must establish a genuine dispute as to a material issue of fact. This entails two requirements. First, the dispute must be over a fact(s) that is material, i.e., one that makes a difference in the outcome of the case. *Anderson*, 477 U.S. at 248 (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”). Whether a factual dispute is material is determined by the substantive law applicable for the claim in question. *Id.* If the opposing party is unable to produce evidence sufficient to establish a required element of its claim that party fails in opposing summary judgment. “[A] complete failure of proof concerning an essential

1 element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex*,
2 477 U.S. at 322.

3 Second, the dispute must be genuine. In determining whether a factual dispute is genuine
4 the court must again focus on which party bears the burden of proof on the factual issue in
5 question. Where the party opposing summary judgment would bear the burden of proof at trial
6 on the factual issue in dispute, that party must produce evidence sufficient to support its factual
7 claim. Conclusory allegations, unsupported by evidence are insufficient to defeat the motion.
8 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989). Rather, the opposing party must, by affidavit
9 or as otherwise provided by Rule 56, designate specific facts that show there is a genuine issue
10 for trial. *Anderson*, 477 U.S. at 249; *Devereaux*, 263 F.3d at 1076. More significantly, to
11 demonstrate a genuine factual dispute the evidence relied on by the opposing party must be such
12 that a fair-minded jury "could return a verdict for [him] on the evidence presented." *Anderson*,
13 477 U.S. at 248, 252. Absent any such evidence there simply is no reason for trial.
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15 The court does not determine witness credibility. It believes the opposing party's
16 evidence, and draws inferences most favorable to that party. *See id.* at 249, 255; *Matsushita*, 475
17 U.S. at 587. Inferences, however, are not drawn out of "thin air," and the proponent must adduce
18 evidence of a factual predicate from which the inference may be reasonably drawn. *American*
19 *Int'l Group, Inc. v. American Int'l Bank*, 926 F.2d 829, 836 (9th Cir.1991) (Kozinski, J.,
20 dissenting) (citing *Celotex*, 477 U.S. at 322). If reasonable minds could differ on material facts at
21 issue, summary judgment is inappropriate. *See Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th
22 Cir.1995). On the other hand, "[w]here the record taken as a whole could not lead a rational trier
23 of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " *Matsushita*, 475
24 U.S. at 587 (citation omitted); *Celotex*, 477 U.S. at 323 (If the evidence presented and any
25 reasonable inferences that might be drawn from it could not support a judgment in favor of the
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1 opposing party, there is no genuine issue). Thus, Rule 56 serves to screen cases lacking any
2 genuine dispute over an issue that is determinative of the outcome of the case.
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III. UNCONTESTED MATERIAL FACTS

6 In compliance with Local Rule (“LR”) 56-1, the following is submitted as a concise
7 statement of facts material to the disposition of this Motion that Defendants claim are not
8 genuinely at issue:
9

10 1. On or about August 17, 2011, Plaintiffs, MARIA TREJO DE ZAMORA and
11 ISELA GOMEZ-DEHINES (hereinafter, “Plaintiffs”) became interested in purchasing a used
12 vehicle on credit. (*See Exhibit A Affidavits of Maria Trejo De Zamora and Isela Gomez-*
13 *Dehines*)
14

15 2. On August 17, 2011, Plaintiffs traveled to Defendant, AUTO GALLERY, INC.,
16 (hereinafter, “Defendant”), used car lot and saw a 2004 Nissan Xterra, (VIN
17 5N1ED28T44C66010) (hereinafter, “the vehicle”). (*See id.*)
18

19 4. The sales person did not speak Spanish, but Plaintiffs spoke to an assistant who
20 spoke some Spanish, and were presented with a retail installment sales contract in English. (*See*
21 *id.*)
22

23 5. Plaintiffs have limited ability to understand, speak or read English. (*See id.*)
24

25 6. Plaintiffs asked for the contract in Spanish but were not provided a retail
26 installment sales contract Spanish. (*See id.*) (*See also Exhibit B Retail Installment Sales*
27 *Contract hereinafter (“RISC”)).*
28

29 7. The retail installment sales contract lists the vehicle’s sale price as \$7,198.00,
30 sales tax of \$582.30 for a total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of
\$10,771.30. (*See id.*)
31

8. The RISC states that there will be 15 monthly payments of \$718.20 beginning on September 1, 2011. (*See id.*)

9. The RISC does not disclose the annual percentage rate, which is 52.662%.(See *id.*)

10. Plaintiffs paid \$3,500 in cash as a down payment but were not given a receipt as Defendant refused to issue a receipt as Defendant stated it was to reduce the sales tax.

11. The Plaintiffs detrimentally relied upon Defendants' failure to disclose the annual percentage rate of 52.662%, as this exceeds the standard used car dealership interest of 29.95% for a client with very poor credit, and Plaintiffs would not have purchased the vehicle if the annual percentage rate had been disclosed on the face of the contract. (*See id.*)

12. The RISC was not offered in Spanish to the Spanish speaking Plaintiff. (See *id.*)

13. The RISC omits material information in that the contract is not in the form and content required by NRS 97.299 and NAC 97.110 but rather is a BBI Autoform contract. (See Exhibit B- RISC.)

14. On September 9, 2011 Plaintiffs made and Defendants accepted a late payment of \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding balance of \$9,771.30. (See Exhibit A affaidavits and Exhibit C – receipts)

15. On October 17, 2012 Plaintiffs made and Defendants accepted a late payment of \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the outstanding balance of \$8,771.30. (*See id.*)

16. On November 18, 2011 Plaintiffs made and Defendants accepted a late payment of \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the outstanding balance of \$7,771.30. (*See id.*)

17. On January 18, 2012 Plaintiffs made and Defendants accepted a late payment of

1 \$500.00 seventeen days late as evidenced by receipt No. 163316. (*See id.*)
2

3 18. On February 15, 2012 Plaintiffs made and Defendants accepted a late payment of
4 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects
5 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance
6 due of \$1,571.30. (*See id.*)
7

8 19. On April 4, 2012 Plaintiffs made and Defendants accepted a late payment of
9 \$500.00 four days late. (*See id.*)
10

11 20. Plaintiffs attempted to pay \$600 in May 2012 however the Auto Gallery refused
12 the payment, and demanded Plaintiff sign a new contract stating she owed \$2,500.00. (*See id.*)
13

14 21. Plaintiffs refused to negotiate the terms of the initial contract and would not sign
15 the new contract for \$2,500.00. (*See id.*)
16

17 22. The vehicle was wrongfully repossessed by Defendant on July 5, 2012. (*See id.*)
18

19 23. Plaintiffs were not in default when the vehicle was repossessed on July 5, 2012.
20 (*See id.*)
21

22 24. By the terms of the August 17, 2011 contract, Plaintiffs were to have paid
23 \$7,898.88 with their July 2012 payment (718.08 x 11 months September through July). (*See id.*)
24 and Exhibit B RISC)
25

26 25. By July 2012, Plaintiffs paid \$8,200 for the vehicle with their April 4, 2012
27 payment (\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200). (*See id.*)
28

29 26. Plaintiffs were ahead with their payments, and not in default on July 5, 2012.
30 (*See id.*)
31

32 27. Defendant consistently accepted late payments. (*See id.* and Exhibit C – receipts)
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1 **V. LEGAL ARGUMENT**

2 **1. Violations of the Truth in Lending Act (TILA)**

3 Congress enacted TILA “to assure a meaningful disclosure of credit terms so that the
 4 consumer will be able to compare more readily the various credit terms available to him and
 5 avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair
 6 credit billing and credit card practices.” 15 U.S.C. § 1601. To effectuate TILA’s purpose, a court
 7 must construe “the Act’s provisions liberally in favor of the consumer” and require absolute
 8 compliance by creditors. *In re Ferrell*, 539 F.3d 1186, 1189 (9th Cir.2008); *see also Jackson v.*
 9 *Grant*, 890 F.2d 118, 120 (9th Cir.1989) (“Even technical or minor violations of the TILA
 10 impose liability on the creditor.”).

12 The Defendants violated the Truth in Lending Act (“TILA”) by failing to disclose the
 13 interest rate, and. amount financed in the Contract at issue. (Exhibit B The transaction of
 14 August 17, 2011, was a consumer credit transaction within the meaning of TILA, 15 U.S.C. §
 15 1602 and Regulation Z, 12 C.F.R. § 226.2, because:

- 16 i. Defendant offered to extend credit to Plaintiff, who is a “consumer,” as
 that term is defined in 12 C.F.R. § 226.2(a)(11). 12 C.F.R. §
 226.1(c)(1)(i);
- 17 ii. Defendant “regularly” extends credit to consumers, as that term is defined
 in 12 C.F.R. § 226.2(17)(v). 12 C.F.R. § 226.1(c)(1)(ii);
- 18 iii. The credit is subject to a “finance charge,” as that term is defined in 12
 C.F.R. § 226.4(a), or is payable by a written agreement in more than four
 installments. 12 C.F.R. § 226.1(c)(1)(iii); and
- 19 iv. The credit is primarily for personal, family, or household purposes. 12
 C.F.R. § 226.1(c)(1)(iv).

20 Defendant, in the contract dated August 17, 2011, failed to disclose the APR in violation
 21 of TILA and Regulation Z. (See Exhibit B Contract). TILA and Regulation Z have been violated
 22 in the following respects:

- 1 i. The loan agreement fails to disclose the APR of 52.662% and include a
2 brief description, such as “the cost of your credit as a yearly rate,” in
3 violation of 15 U.S.C. § 1638(a)(4) and Regulation Z, § 226.18(e);
4
- ii. The loan agreement fails to disclose the “amount financed,” using that
5 term, and a brief description such as “the amount of credit provided to you
6 or on your behalf,” in violation of 15 U.S.C. § 1638(a)(2) and Regulation
7 Z, § 226.18(b).
8
- iii. The loan agreement fails to disclose the “finance charge,” using that term,
9 and a brief description such as “the dollar amount the credit will cost you,”
10 in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z, § 226.18(d).
11
- iv. The loan agreement fails to make the terms “finance charge” and “annual
12 percentage rate” more conspicuous than any other disclosure, in violation
13 of 15 U.S.C. § 1632(a) and Regulation Z, § 226.17(a)(2);
14
- v. The loan agreement fails to provide a statement of the consumer’s right to
15 obtain, upon request, a written itemization of the amount financed, or fails
16 to automatically disclose itemization of the amount financed, including
17 amounts paid to other persons by the creditor on the consumer’s behalf,
18 with those persons identified, in violation of 15 U.S.C. § 1638(a)(2)(B)
19 and Regulation Z, § 226.18(c); and
20
- v. The loan agreement fails to include a separate written itemization of the
21 amount financed, including any amounts paid to other persons by the
22 creditor on the consumer’s behalf, specifically, public officials or
23 government agencies, as required by Reg. Z, § 226.18(c)(1)(iii).

24 This is precisely the type of RISC that TILA was enacted to prevent dealers from using on
25 unsophisticated consumers. The finance charge is in small print and does not state a percentage
26 rate. Plaintiff both state they would not have purchased the vehicle at an exorbitant interest rate
27 of 52.662%. (Exhibit A affidavits of Plaintiffs) The contract buries the finance charge
28 information and with that fails to inform the consumers what interest rate they are being charged.
29 TILA is about disclosure and this contract lacks disclosure. The legislative history from
30 Congress's enactment and amendment of TILA is consistent with the language of the statute
31 limiting its scope to disclosure. *See S.Rep. No. 392, at 1 (1967)* (“The basic purpose of the truth
32 in lending bill is to provide a full disclosure of credit charges to the American consumer. The bill
33 does not in any way regulate the credit industry....”); H.R.Rep. No. 1040 (1967), *as reprinted in*

1968 U.S.C.C.A.N. 1962, 1963 (“Title I, the truth in lending and credit advertising title, [does
 1
not] regulate[] the credit industry.... It provides for full disclosure of credit charges, rather than
 2
regulation of the terms and conditions under which credit may be extended.”); S. Rep. 100-259,
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at 3 (1987), *as reprinted in* 1987 U.S.C.C.A.N. 3936, 3938 (“The Committee believes that early
 4
disclosure of relevant cost information, coupled with widespread publication of the costs of
 5
different cards, will help remedy the problem of enabling consumers to shop around for the best
 6
cards.”).

8
 Summary judgment must be granted to the Plaintiffs as the RISC clearly violates TILA.
 9
 The RISC fails to state the exorbitant interest charged to the consumers in this matter, which is a
 10
 clear violation of TILA.

12 **2. Defendants violated of NRS Chapter 97, Retail Installment Sales of Goods and Services**

13 Nevada has specific laws regarding what is a retail sales installment contract, and by
 14
 statute specifically states what a RISC for a used car must contain. In this case the contract is
 15
 clearly a RISC contract.

16 NRS 97.115 defines a “retail installment transaction” as a:

17 . . . transaction in which a retail buyer purchases goods . . . from a
 18
 retail seller pursuant to a retail installment contract . . . which *may*
 19
 provide for a finance charge and under which the buyer agrees to
 20
 pay the total of payments in one or more installments.

21 (Emphasis added).

22 Because the August 17, 2011 Contract included a finance charge and was payable in one or more
 23
 installments, the August 17, 2011 Contract was a “retail installment” transaction as defined in
 24
 NRS 97.115.

25 Defendant is a seller as defined by statute.

26 NRS 97.125(1)(c) defines a “retail seller” or “seller” as:

27 A person, other than a financial institution, who regularly extends,

1 whether in connection with sales or leases of goods or services,
2 credit which is payable by agreement in more than four
3 installments . . .

4 Under the August 17, 2011 Contract, Plaintiff was required to pay Defendant fifteen (15)
5 installments of \$718.08. Therefore, Defendant is a retail seller, as defined in NRS 97.125(1)(c).

6 The provisions of NRS Chapter 97 are exclusive, and govern all retail installment
7 transactions included in NRS Chapter 97. *See* NRS 97.285. Contracts for the sale of vehicles
8 are included in NRS Chapter 97. *See* NRS 97.297 to 97.299, inclusive. The transaction of
9 August 17, 2011, involved the taking of a security interest to secure part of the purchase price of
10 the vehicle; an application for credit was made through Defendant as the seller of the vehicle;
11 Defendant is a “dealer” as defined by NRS 482.020, and; the sale was not a commercial
12 transaction.

13 Defendant violated NRS 97.299 by failing to use the form prescribed by the
14 Commissioner of Financial Institutions (found in NAC 97.110) for contracts to be used in the
15 sale of vehicles if the sale involves the taking of a security interest to secure all or part of the
16 purchase price of the vehicle, the application for credit is made to or through the seller of the
17 vehicle, the seller is a dealer, and the sale is not a commercial transaction. Specifically,
18 Defendant violated NRS 97.185(1)(e) by failing to include the aggregate amount of official fees
19 in the written contract. (*See Exhibit B RISC*) Defendant violated NRS 97.299(2)(d) by failing to
20 include in the written contract a description of the method for calculating the unearned portion of
21 the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS
22 97.255. (*See id.*)

23 If the Defendant has used the contract prescribed by law in NRS Chapter 97, there would
24 be no violations as the contract has a section for TILA disclosures, and the mandatory state
25 disclosures. The form used in this case was from BPI Auto Forms. (*Exhibit B- RISC*) This is a
26
27
28

1 generic form contract that does not comply with federal TILA disclosures or Nevada
 2 requirements for disclosures.

3 Summary judgment must be granted as the Defendant has failed to use the required form
 4 prescribed by the state of Nevada. As a result of these violations of Nevada law, Defendant is
 5 barred from the recovery of any finance charge, official fees, or any charge for delinquency or
 6 collection under or in connection with Plaintiff's written contract, pursuant to NRS 97.305. As a
 7 result of the foregoing violations of NRS Chapter 97, all Plaintiff owed Defendant under the
 8 August 17, 2011 Contract is the selling price of the vehicle \$7,189, plus sales tax of \$582.30
 9 (8.1% sales tax on \$7,189.00), or \$7,771.30, thus pursuant to NRS 97.305 Plaintiff is entitled to
 10 damages of \$8,200 (total paid) - \$7,771.30 = \$428.70.

12

13 **3. Defendant violated NRS Chapter 97, Retail Installment Sales of Goods and Services and**
 14 **NRS 482.3277 Dealers: Certain purchasers and prospective purchasers to be allowed to**
 15 **view certain documents in Spanish language**

16

17 Nevada has specific laws regarding what is a retail sales installment contract, and by
 18 statute specifically states what a RISC for a used car must contain. In this case the contract is
 19 clearly a RISC contract.

20 NRS 97.115 defines a "retail installment transaction" as a:

21 . . . transaction in which a retail buyer purchases goods . . . from a
 22 retail seller pursuant to a retail installment contract . . . which *may*
 23 provide for a finance charge and under which the buyer agrees to
 pay the total of payments in one or more installments.

24 (Emphasis added).

25 Because the August 17, 2011 Contract included a finance charge and was payable in one or more
 26 installments, the August 17, 2011 Contract was a "retail installment" transaction as defined in
 27 NRS 97.115.
 28

1 Defendant is a seller as defined by statute.

2 NRS 97.125(1)(c) defines a “retail seller” or “seller” as:

3 A person, other than a financial institution, who regularly extends,
4 whether in connection with sales or leases of goods or services,
5 credit which is payable by agreement in more than four
installments . . .

6 Under the August 17, 2011 Contract, Plaintiff was required to pay Defendant fifteen (15)
7 installments of \$718.08. Therefore, Defendant is a retail seller, as defined in NRS 97.125(1)(c).

8 The provisions of NRS Chapter 97 are exclusive, and govern all retail installment
9 transactions included in NRS Chapter 97. *See* NRS 97.285. Contracts for the sale of vehicles
10 are included in NRS Chapter 97. *See* NRS 97.297 to 97.299, inclusive. The transaction of
11 August 17, 2011, involved the taking of a security interest to secure part of the purchase price of
12 the vehicle; an application for credit was made through Defendant as the seller of the vehicle;
13 Defendant is a “dealer” as defined by NRS 482.020, and; the sale was not a commercial
14 transaction. Defendant violated NRS 482.3277 by failing to provide the retail installment sales
15 contract in Spanish.

17 The sale was done in poor Spanish by the sales person’s assistant as the Plaintiffs are
18 Spanish speaking. (*See Exhibit A- Affidavits of Plaintiffs*) The Plaintiffs asked for the retail
19 installment sales contract in Spanish. (*See id.*) Defendants did not provide the retail installment
20 sales contract in Spanish. (*See id.*) The Plaintiff were unable to read the contract they signed,
21 and relied upon the representations made by the Defendant’s employee. NRS 482.3277 was
22 enacted to protect Spanish speaking consumers. Additionally, if the RISC was the one mandated
23 by Nevada law the monetary amounts of the finance charge and percent would have been clear,
24 even to a Spanish speaker.

26 Summary judgment must be granted for failure to provide the RISC in Spanish. As a
27 result of the foregoing violations of NRS Chapter 97, all Plaintiff owed Defendant under the

1 August 17, 2011 Contract is the selling price of the vehicle \$7,189, plus sales tax of \$582.30
 2 (8.1% sales tax on \$7,189.00), or \$7,771.30, thus pursuant to NRS 97.305 Plaintiff is entitled to
 3 damages of \$8,200 (total paid) - \$7,771.30 = \$428.70.

4 **3. Defendant Fraudulently Made a Material Misrepresentation**

5 “[I]f a party's manifestation of assent to contract was induced by either a fraudulent or a
 6 material misrepresentation by the other party, upon which the recipient was justified in relying,
 7 the contract was voidable by the recipient.” *See Robinson v. State Farm Mutual Auto. Ins. Co.*,
 8 137 Idaho 173, 45 P.3d 829, 836 (2002). In order to succeed on a claim of fraudulent
 9 misrepresentation in Nevada, a plaintiff must show: (1) that the defendant made a false
 10 misrepresentation of material fact; (2) the defendant knew or believed the representation was
 11 false; (3) the defendant intended to induce the plaintiff to act or refrain from acting in reliance
 12 upon the misrepresentation; (4) the plaintiff justifiably relied on the misrepresentation; and (5)
 13 the plaintiffs were damaged by such reliance. *Albert H. Wohlers & Co. v. Bartgis*, 969 P.2d 949,
 14 957–58 (Nev.1998). “With respect to the false representation element, the suppression or
 15 omission of a material fact which a party is bound in good faith to disclose is equivalent to a
 16 false representation, since it constitutes an indirect representation that such fact does not exist.”
 17 *Nelson v. Heer*, 163 P.3d 420, 426 (Nev.2007) (internal quotation marks omitted). TILA
 18 requires, among other things, disclosure of finance charges and the annual percentage rate. *See*
 19 15 U.S.C. § 1638(a); 12 C.F.R. § 226.18. The essential terms of a loan agreement are “the
 20 amount of the loan, the rate of interest, the terms of repayment, applicable loan fees and
 21 charges.” *Kruse v. Bank of America*, 202 Cal.App.3d 38, 60, 248 Cal.Rptr. 217 (1988), *cert.*
 22 *denied*, 109 S.Ct. 87 (1989).

23
 24 On August 17, 2011, Defendant made a false representation, through omission to
 25 Plaintiffs by failing to provide disclosures required under state and federal law as argued above.
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1 Defendant is required by TILA to provide the Plaintiffs with the APR on the retail installment
2 sales contract. Defendant as a dealer has the responsibility to provide TILA information, and
3 specifically the APR of the retail installment sales contract. Defendant failed to disclose the true
4 APR of 52.662% to the Plaintiffs. (*See Exhibit B- Contract*) Defendant knew it was omitting
5 the APR based upon the face of the contract, as no APR is listed. (*See id.*)

6 The interest rate on the car loan is material to the contract and an essential term of the
7 contract. It is beyond dispute that defendant used a form contracts when it transacted with the
8 Defendants, and that the form contract lacked the required disclosure. (*See Exhibit B- contract.*)
9 As no material facts remain in dispute concerning defendant's use of form contracts that withheld
10 relevant information from consumers and violated the TILA statute, the Court should find as a
11 matter of law that defendant is liable to plaintiff for violation of TILA.
12

13
14 Defendant's misrepresentation of the APR on the August 17, 2011 Contract was designed
15 to induce Plaintiffs to act and/or refrain from acting, specifically, Defendant intended to induce
16 Plaintiffs to enter into the August, 2011 Contract and to refrain from leaving Defendant's used
17 car lot and taking their business elsewhere. Plaintiffs are unsophisticated consumers who
18 justifiably relied upon Defendant's false representation through lack of disclosures. (*See Exhibit*
19 A Plaintiffs Affidavits) The Plaintiffs never would have purchased the vehicle if the true APR of
20 52.662% had been disclosed on the face of the contract, as is required by law. (*See Exhibit A*
21 Plaintiffs Affidavits) If the true APR of over 50% was disclosed the Plaintiffs would have
22 realized that they were essentially overpaying for the vehicle. Without the disclosure the
23 Plaintiffs were unaware of the true interest rate and the profit that the dealership was making on
24 the RISC.
25

26 Plaintiffs sustained damages as a result of their reliance on Defendant's false
27 representations through omission, specifically, but for Defendant's failure to disclose that the
28

1 APR on the August 17, 2011 Contract was 52.662%, Plaintiff would not have entered into the
2 August 17, 2011 Contract if they were aware of the 52,662% APR. (*See id.*) Additionally, the
3 Plaintiffs have overpaid on the contract by paying such an exorbitant interest rate.

4 Summary judgment must be granted as to the material false representation. To date,
5 Plaintiff has suffered actual damages of no less than \$8,200.00, which is the amount Plaintiffs
6 have paid as a result of Defendant's fraudulent misrepresentation. In the alternative, as a result
7 of Defendant's fraudulent misrepresentation, Plaintiff is entitled to equitable rescission of the
8 August 17, 2011 Contract through a declaration that the contract is void and an injunction
9 mandating that Defendant return Plaintiffs as closely as possible to the position they was in prior
10 to entering into the August 17, 2011 Contract. Summary judgment should be granted material
11 misrepresentation.

13

14 **5. Defendant Violated NRS Chapter 598, Deceptive Trade Practices**

15 NRS 598.0923(2) states that a person engages in a "deceptive trade practice" if, he "fails
16 to disclose a material fact in connection with the sale or lease of goods or services." On August
17 17, 2011, Defendant falsely represented that the APR on the August 17, 2011, by failing to
18 disclose that the APR is 52.662% , thereby making a false representation through omission in
19 violation of NRS 598.0915(15).NRS 598.0923(3) states that a person engages in a deceptive
20 trade practice when he or she violates a state or federal statute or regulation relating to the sale or
21 lease of goods or services. (*See Exhibit B- Contract*) On July 22, 2011, as outlined above,
22 Defendant violated the federal Truth in Lending Act, and NRS Chapter 97, thereby violating
23 state and federal statutes and regulations relating to the sale of goods in violation of NRS
24 598.0923(3).

25 ///
26
27

1 By violating NRS 598.0923(2) & (3), Defendant has engaged in “consumer fraud” as that
 2 term is defined by NRS 41.600(2)(e). Pursuant to NRS 41.600(3)(a), Plaintiffs are entitled to
 3 recover actual damages of no less than \$8,200, which is the total cost paid under the contract.

4 Summary judgment must be granted as the contract on its face clearly does not state the
 5 interest rate. (*See Exhibit B- Contract*) By failing to disclose the interest rate, the deception was
 6 done. And if the proper contract had been utilized, there would be no issue as it has delineated
 7 sections for the interest rate and other financial information to be stated. (*See NAC 97*)

9 **6. Defendants Converted the Personal Property of Plaintiffs**

10 In order to show conversion, Plaintiffs must prove that Defendant “wrongfully exerted
 11 [dominion] over personal property in denial of, or inconsistent with, title or rights therein or in
 12 derogation, exclusion or defiance of such rights.” *See Edwards v. Emperor's Garden Rest.*, 122
 13 Nev. 317, 328, 130 P.3d 1280, 1287 (2006) (citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413
 14 (1958)). While conversion requires a physical act of dominion over personal property, liability for
 15 conversion is predicated upon “general intent, which does not require wrongful intent and is not
 16 excused by care, good faith, or lack of knowledge.” *Evans v. Dean Witter Reynolds, Inc.*, 116
 17 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

18 On July 5, 2012 Plaintiffs were in full compliance with the terms of their August 17,
 19 2011 contract, including current on their payments, in fact Plaintiffs were ahead on their
 20 contractual payment schedule on July 5, 2012. (Exhibit C) Plaintiffs were to have paid
 21 \$7,898.88 with their July 2012 payment (718.08 x 11 months September through July), however
 22 they had already paid \$8,200 on the contract at that date. Plaintiffs paid \$8,200 in installment
 23 payments for the vehicle with their April 4, 2012 payment (\$1,000 + \$1,000 + \$1,000 + \$500 +
 24 \$4,200 + \$500 = \$8,200). Plaintiffs were ahead of their contractual payment schedule, and not
 25

1 in default on July 5, 2012 when the vehicle was repossessed. The repossession on July 5, 2012
 2 was unlawful as the Plaintiffs were not behind in their payments but rather were ahead of their
 3 payment schedule.

4 On July 5, 2013, by repossessing Plaintiffs' vehicle Defendant committed a distinct act of
 5 dominion wrongfully exerted over Plaintiffs' personal property, i.e. 2004 Nissan Xterra, (VIN
 6 5N1ED28T44C66010), in denial of, or inconsistent with Plaintiffs' title or rights therein, and
 7 Defendants acts were in derogation, exclusion, or defiance of Plaintiffs' title or rights in the
 8 personal property. The repossession and conversion of the personal property is clear and
 9 unmistakable, and Plaintiffs are entitled to summary judgment on the matter.
 10

11 **8. Defendants Violated of NRS Chapter 104: Uniform Commercial Code**

12 NRS 104.1304 imposes the obligation of good faith in the performance of every contract
 13 or duty within Chapter 104. NRS 104.1201(t) provides that "good faith" means honesty-in-fact
 14 and the observance of reasonable commercial standards of fair dealing. Defendant failed and
 15 refused to act honestly and to observe reasonable commercial standards of fair dealing,
 16 including, but not limited to: failing to adhere to TILA regulations, i.e. failing to state the APR as
 17 52.662% and repossessing the vehicle when the Plaintiff was not in default. NRS 104.9611(2)
 18 requires a secured party to send a debtor a notification before disposition of collateral.
 19

20 Specifically, NRS 104.9614(1)(a) requires that notification to the debtor must contain the
 21 information required by NRS 104.9613(1), namely:

- 22 i. The method of intended disposition;
 23
 24 ii. Statement that the debtor is entitled to an accounting of the unpaid indebtedness
 and the charge, if any, for the accounting; and
 25
 26 iii. The time and place of a public disposition or the time after which any other
 disposition is to be made.
 27
 28

1 Defendant failed to provide Plaintiffs with a notification before disposition of collateral
 2 that contained the information required by NRS 104.9613(1). This did not occur in this matter.
 3 Furthermore, the law provides that the debtor has the right to redeem the collateral at any time
 4 before the sale is consummated. NRS 104.9623(3)(b). *See also* the safe harbor notice form
 5 contained in NRS 104.9614(3), stating: "You can get the property back at any time before we
 6 sell it...."

7 Defendant never gave notice to Plaintiffs of the intended disposition pursuant to NRS
 8 104.9623(3)(b) or NRS 104.9613. NRS 104.9610 requires that every aspect of disposition of
 9 collateral be commercially reasonable. Notice violations, or failure to provide notice, alone
 10 render a disposition commercially unreasonable. Based upon the clear violations of state law,
 11 the Plaintiffs are entitled to summary judgment.

13 **9. Breach of Contract**

14 Plaintiffs and Defendant entered into a valid and existing contract on August 17, 2011.
 15 (Exhibit B – contract) Defendant established a pattern and practice of accepting late payments
 16 from Plaintiffs without exercising its right to repossess under the Contract. Under Nevada law,
 17 ". . . a secured party who has not insisted upon strict compliance in the past, who has accepted
 18 late payments as a matter of course, [m]ust, before he may validly rely upon such a clause to
 19 declare default and effect repossession, [g]ive notice to the debtor (lessee) that strict compliance
 20 with the terms of the contract will be demanded henceforth if repossession is to be avoided."
 21 *Nevada National Bank v. Huff*, 94 Nev. 506, 512, 582 P.2d 364, 369 (1978) (*citing Ford Motor*
 22 *Credit Company v. Waters*, 273 So.2d 96 (Fla.App., 1973); *Fontaine v. Industrial National Bank*
 23 *of Rhode Island*, 111 R.I. 6, 298 A.2d 521, 11 U.C.C. Rptr. 1096 (1973); *Kupka v. Morey*, 541
 24 P.2d 740 (Alaska, 1975); and *Varela v. Wells Fargo Bank*, 15 Cal. App. 741, 93 Cal. Rptr. 428
 25 (Cal.App., 1971)).

1 There is a consistent pattern of accepting late payments. On November 18, 2011
2 Plaintiffs made and Defendants accepted a late payment of \$1,000.00 seventeen days late as
3 evidenced by Receipt No. 163302, which indicates the outstanding balance of \$7,771.30. (See
4 *id.*) On January 18, 2012 Plaintiffs made and Defendants accepted a late payment of \$500.00
5 seventeen days late as evidenced by receipt No. 163316. (See *id.*) On February 15, 2012
6 Plaintiffs made and Defendants accepted a late payment of \$4,200 fourteen days late as
7 evidenced by receipt No. 163332, upon which this receipt reflects Auto Gallery's agreement to
8 reduce the overall purchase price by \$1,500.00, indicating a balance due of \$1,571.30. (See *id.*)
9 On April 4, 2012 Plaintiffs made and Defendants accepted a late payment of \$500.00 four days
10 late. (See *id.*) Clearly the pattern of payments was consistently late.
11

12 The Defendant by continually accepting late payments clearly was not enforcing strict
13 compliance with the contract. Defendant breached its contract with Plaintiff by, without first
14 giving Plaintiff notice that henceforth strict compliance with the terms of the contract would be
15 required, repossessing the vehicle. Plaintiffs are entitled to summary judgment under *Huff*, as
16 the Defendant continually accepted late payments, even past thirty (30) days, and this acceptance
17 of late payments was relied upon by the Plaintiffs. For the Defendant to repossess the vehicle
18 after substantial payments had been made on the vehicle, after continually accepting late
19 payments for almost a year violates *Huff*, and summary judgment should be granted for the
20 Plaintiffs.
21

22 **IV. CONCLUSION**
23

24 Plaintiffs are entitled to summary judgment based upon the above arguments. The
25 Plaintiffs are unsophisticated consumers who were taken advantage of by the Defendant. The
26 Defendant clearly violated TILA, and misrepresented a material element of the contract, the
27 interest rate. Additionally, the Defendant prematurely repossessed the vehicle as the Plaintiffs
28

were ahead on their contract payments and the dealership consistently accepted late payments under the contact. Therefore, summary judgment should be granted for the Plaintiffs.

DATED this 29th day of March, 2013.

**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**

/s/ JILL C. DAVIS, ESQ.

JILL C. DAVIS, Esq.

Nevada Bar No. 8418

**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**

725 E. Charleston Blvd
Las Vegas, NV 89104
Telephone: (702) 386-1070 x 1452
Facsimile: (702) 388-1642
Attorneys for Plaintiffs

EXHIBIT A

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MICHAEL R. JOE, ESQ.
Nevada Bar No.: 10626
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Las Vegas, Nevada 89101
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Facsimile: (702) 388-1642
jdavis@lacsn.org

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARIA TREJO DE ZAMORA and,
ISELA GOMEZ-DEHINES

Case No.: 2:12-cv-01357-MMD-CWH

Plaintiff,

vs.

AUTO GALLERY, INC.

Defendant(s).

AFFIDAVIT OF MARIA TREJO DE ZAMORA

I, MARIA TREJO DE ZAMORA, do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. I am a Plaintiff in the above titled action:
 2. On or about August 17, 2011, Plaintiffs, myself MARIA TREJO DE ZAMORA, and ISELA GOMEZ-DEHINES became interested in purchasing a used vehicle on credit.
 3. On August 17, 2011, we traveled to Defendant, AUTO GALLERY, INC.,

1 (hereinafter, "Defendant"), used car lot and saw a 2004 Nissan Xterra, (VIN
2 5N1ED28T44C66010) (hereinafter, "the vehicle").

3 4. The sales person did not speak Spanish, but I spoke to an assistant who spoke a
4 little Spanish and was presented with a retail installment sales contract in English.

5 5. I have limited ability to understand, speak or read English.

6 6. I asked for the contract in Spanish but was not provided a retail installment sales
7 contract in Spanish.

8 7. A true and correct copy of the retail installment sales contract is attached to my
9 affidavit and motion for summary judgment.

10 8. The contract lists the vehicle's sale price as \$7,198.00, sales tax of \$582.30 for a
11 total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of \$10,771.30.

12 9. We paid \$3500.00 in cash as a down payment. Auto Gallery refused to give us a
13 receipt. They said they did this so that they would not have to pay more sales tax.

14 10. The contract states that there will be 15 monthly payments of \$718.20 beginning on
15 September 1, 2011.

16 11. The contract does not disclose the annual percentage rate, which is 52.662%.

17 12. I relied upon the contract, would not have purchased the vehicle if the annual
18 percentage rate had been disclosed on the face of the contract.

19 13. The contract was not offered in Spanish to the Spanish speaking Plaintiff.

20 14. ISELA GOMEZ-DEHINES and I were both contributing to the payments for the
21 vehicle.

22 15. On September 9, 2011, we made and Defendants accepted a late payment of
23 \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding
24 balance of \$9,771.30.

1 16. On October 17, 2012 we made and Defendants accepted a late payment of
2 \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the
3 outstanding balance of \$8,771.30.

4 17. On November 18, 2011 we made and Defendants accepted a late payment of
5 \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the
6 outstanding balance of \$7,771.30.

7 18. On January 18, 2012 we made and Defendants accepted a late payment of
8 \$500.00 seventeen days late as evidenced by receipt No. 163316.

9 19. On February 15, 2012 we made and Defendants accepted a late payment of
10 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects
11 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance
12 due of \$1,571.30.

13 20. On April 4, 2012 we made and Auto Gallery accepted a late payment of \$500.00
14 four days late.

15 21. We attempted to pay \$600.00 in May 2012, however Auto Gallery refused the
16 payment, and demanded we sign a new contract stating we owed \$2,500.00.

17 22. We refused to negotiate the terms of the initial contract and would not sign the
18 new contract for \$2,500.00, and went to Legal Aid Center of Southern Nevada.

19 23. The vehicle was wrongfully repossessed by Auto Gallery on July 5, 2012.

20 24. We were not in default when the vehicle was repossessed on July 5, 2012.

21 25. By the terms of the August 17, 2011 contract, we were to have paid \$7,898.88
22 with our July 2012 payment (718.08×11 months September through July).

23 26. By July 2012, we paid \$8,200 for the vehicle with our April 4, 2012 payment
24 ($\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200$).

1 27. We were ahead with our payments, and not in default on July 5, 2012.

2 28. Auto Gallery consistently accepted late payments.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT

4 DATED this 1st day of February, 2013.

5
6
7

MARIA TREJO DE ZAMORA

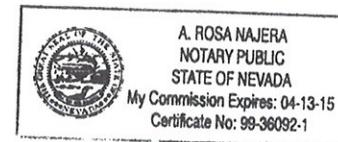
8 SUBSCRIBED and SWORN to before me

9
10 this 1st day of February, 2013.

11 By: MARIA TREJO DE ZAMORA

12 NOTARY PUBLIC in and for said County and State

13 A. Rosa Najera



1 JILL C. DAVIS, ESQ.
2 Nevada Bar No.: 8418
3 MICHAEL R. JOE, ESQ.
4 Nevada Bar No.: 10626
5 **LEGAL AID CENTER OF**
6 **SOUTHERN NEVADA, INC.**
7 800 South Eighth Street
8 Las Vegas, Nevada 89101
9 Telephone: (702) 386-1070 x 176
10 Facsimile: (702) 388-1642
11 davis@lacsn.org

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 MARIA TREJO DE ZAMORA and,
11 ISELA GOMEZ-DEHINES

12 Case No.: 2:12-cv-01357-MMD-CWH

13 Plaintiff,

14 vs.

15 AUTO GALLERY, INC.

16 Defendant(s).

17

18 **AFFIDAVIT OF ISELA GOMEZ-DEHINES**

19
20
21 **STATE OF NEVADA**)
22) ss:
23 **COUNTY OF CLARK**)

24 I, ISELA GOMEZ-DEHINES, do hereby swear under penalty of perjury that the
25 following assertions are true to the best of my knowledge and belief:

26 1. I am a Plaintiff in the above titled action:

27 2. On or about August 17, 2011, Plaintiffs, myself, ISELA GOMEZ-DEHINES and

28 MARIA TREJO DE ZAMORA became interested in purchasing a used vehicle on credit.

1 3. On August 17, 2011, we traveled to Defendant, AUTO GALLERY, INC.,
2 (hereinafter, "Defendant"), used car lot and saw a 2004 Nissan Xterra, (VIN
3 5N1ED28T44C66010) (hereinafter, "the vehicle").

4 4. The sales person did not speak Spanish, but I spoke to an assistant who spoke a
5 little Spanish and was presented with a retail installment sales contract in English.
6

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9 contract in Spanish.

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11 affidavit and motion for summary judgment.
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13 8. The contract lists the vehicle's sale price as \$7,198.00, sales tax of \$582.30 for a
14 total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of \$10,771.30.

15 9. We paid \$3500.00 in cash as a down payment. Auto Gallery refused to give us a
16 receipt. They said they did this so that they would not have to pay more sales tax.
17

18 10. The contract states that there will be 15 monthly payments of \$718.20 beginning on
19 September 1, 2011.

20 11. The contract does not disclose the annual percentage rate, which is 52.662%.

21 12. I relied upon the contract, would not have purchased the vehicle if the annual
22 percentage rate had been disclosed on the face of the contract.
23

24 13. The contract was not offered in Spanish to the Spanish speaking Plaintiff.

25 14. ISELA GOMEZ-DEHINES and I were both contributing to the payments for the
26 vehicle.
27

1 15. On September 9, 2011, we made and Defendants accepted a late payment of
2 \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding
3 balance of \$9,771.30.

4 16. On October 17, 2012 we made and Defendants accepted a late payment of
5 \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the
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7 17. On November 18, 2011 we made and Defendants accepted a late payment of
8 \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the
9 outstanding balance of \$7,771.30.

10 18. On January 18, 2012 we made and Defendants accepted a late payment of
11 \$500.00 seventeen days late as evidenced by receipt No. 163316.

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13 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects
14 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance
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16 20. On April 4, 2012 we made and Auto Gallery accepted a late payment of \$500.00
17 four days late.

18 21. We attempted to pay \$600.00 in May 2012, however Auto Gallery refused the
19 payment, and demanded we sign a new contract stating we owed \$2,500.00.

20 22. We refused to negotiate the terms of the initial contract and would not sign the
21 new contract for \$2,500.00, and went to Legal Aid Center of Southern Nevada.

22 23. The vehicle was wrongfully repossessed by Auto Gallery on July 5, 2012.

23 24. We were not in default when the vehicle was repossessed on July 5, 2012.

25. By the terms of the August 17, 2011 contract, we were to have paid \$7,898.88 with our July 2012 payment (718.08×11 months September through July).

26. By July 2012, we paid \$8,200 for the vehicle with our April 4, 2012 payment (\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200).

27. We were ahead with our payments, and not in default on July 5, 2012.

28. Auto Gallery consistently accepted late payments.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this 1st day of February, 2013.


ISELA GOMEZ-DEHINES

SUBSCRIBED and SWORN to before me,

this 1st day of February, 2013.

By: ISELA GOMEZ-DEHINES

NOTARY PUBLIC in and for said County and State

A. Ron Nagle

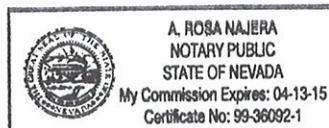


EXHIBIT B

MOTOR VEH
PURCHASE C...
AND FEDERAL
DISCLOSURE
STATEMENT

Seller AUTO Galler
6165 E. Golden Ave #264
Las Vegas, NV 89116

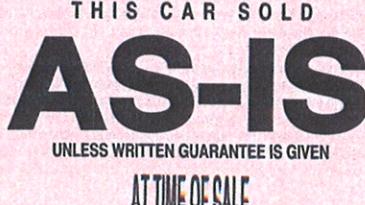
Purchaser Maria TREJO-DE-ZAMORA OR ISELA GOMEZ-DEHINES
Address 3880 WYNN RD Apt 410

Cell# (702) 308-0908
622 1005 call

Enter my order for the automobile, accessories and insurance listed below under the terms and conditions set forth below on the reverse side.

NEW <input type="checkbox"/>	USED <input checked="" type="checkbox"/>	COLOR	TRIM	Approx. Del. Date	R.O.S No.
Year 04	Cyl. 6	Make NISSAN	Model TERRA	CD No. 110287400666010	License No.

Odometer Reading 97639 Type HIGH Key No. Tab No. MOTOR VEHICLE \$7189 00



REMARKS CAR sold AS IS No warranty
15 payment of \$718.28
15K 718.28 = 10771.50
first payment due on 5/1/04
2nd - late Payment fee \$100 each
TINC will add to the balance
- 15

Legal Owner AUTO Galler

INSURANCE REQUEST

Purchaser requests the following insurance through Seller and understands that insurance will not be in force until accepted by the insurance carrier.

WARNING-UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

S/S	BUYER	Gross Premium
\$ Ded. Comp. Fire & Theft	Mos.; \$	
\$ Deductible Collision	Mos.; \$	
Bodily Injury \$ Limits	Mos.; \$	
Property Damage \$ Limits	Mos.; \$	
Medical	Mos.; \$	
Disability Insurance	Mos.; \$	
Credit Life Insurance	Mos.; \$	
If Purchaser furnishes own insurance list:	Total Gross Premium \$	

INS. CO.

Agent/Broker

NOTICE: No person is required as a condition precedent to financing the purchase of a motor vehicle that any insurance be negotiated or purchased through a particular insurance agent or broker.

CREDIT INSURANCE AUTHORIZATION Date _____

The undersigned voluntarily requests the following credit insurance for the term of the credit and understands that **SUCH INSURANCE IS NOT REQUIRED AS A CONDITION TO THIS CREDIT EXTENSION.**

- Credit Disability Insurance: Premium \$ _____
 Credit Life Insurance Premium for one person \$ _____

Premium for additional insured signed below \$ _____
The undersigned acknowledges disclosure of the cost of such insurance as shown herein and authorizes inclusion of the premiums in the balance payable under this obligation.

Purchaser _____ Age _____

The undersigned requests credit life insurance as an additional insured:

Co-purchaser _____ Age _____

FILL OUT THIS SECTION IF USED CAR IS TO BE TRADED IN

YEAR _____ MAKE _____ MODEL _____

I.D. No. _____ Tab No. _____ License No. _____

ODOMETER READING _____ AV _____

BALANCE OWED TO _____

ADDRESS _____

ACCESSORIES \$ 0.00

MOTOR VEHICLE & ACCESSORIES 0.00

SALES TAX 582.30

DOWNPAYMENT: Trade-In (A) \$ 7771.50 CASH PRICE \$ 7771.50

Less Pay Off (B) \$ _____ (D) \$ _____

TRADE-IN (A less B) (C) \$ _____

REC. # _____ Cash Downpayment Previously Paid (D) \$ _____

REC. # _____ Cash Downpayment Paid Herewith (E) \$ _____

REC. # _____ Deferred Cash Downpayment (F) \$ _____

CASH DOWNPAYMENT (D, E & F) (G) \$ 7771.50

License \$ _____ TOTAL DOWNPAYMENT (Total of C & G) \$ 7771.50

Cert. of Title \$ _____ UNPAID BALANCE ON CASH PRICE \$ 7771.50

Reg. \$ _____ TOTAL GROSS INSURANCE PREMIUM \$ 0.00

TOTAL \$ _____ DEPARTMENT OF MOTOR VEHICLES \$ 0.00

UNPAID BALANCE-AMOUNT FINANCED \$ 7771.50

FINANCE CHARGE \$ 50.00

TOTAL OF PAYMENTS (6 + 7 + 2F) \$ 10,371.50

DEFERRED PAYMENT PRICE (Total of 1, 4, 5, & 7) \$ 10,371.50

TOTAL OF PAYMENTS PAYABLE IN 15 PAYMENTS AS FOLLOWS: 10

Deferred Cash Downpayment due 15 Weekly/Monthly Payments of \$ 718.28 20 of \$ 10,371.50 each beginning 5-29-04 2011

If any payment is more than twice the amount of a regular equal payment - IDENTIFY by writing "BALLOON PAYMENT". "BALLOON PAYMENTS" will not be refinanced.

SECURITY INTEREST: This Purchase Order is a security agreement covering the above described motor vehicle. Title to said property shall not pass to Purchaser until all sums payable, and other amounts due or to become due, are fully paid.

Upon execution of a Security Agreement pursuant to this Purchase Order said agreement shall provide:

PREPAREMENT: In the event of prepayment in full, Purchaser is entitled to a partial refund of the unearned finance charge computed on the rule of 78. Where the finance charge, after computing the refund, amounts to less than \$25.00, there may be retained an amount equal to \$25.00. Any unpaid delinquency charges may be deducted from such refund. No refunds less than \$1.00.

DEFAULT AND ACCELERATION: If Purchaser defaults in the performance of his obligations hereunder, Seller at his option may accelerate the payment of the unpaid balance, and (1) sue for such balance, or (2) repossess said property.

LATE CHARGES: A late charge of 5% is payable on any payment past due 10 days.

Purchaser certifies that he is of legal age, and agrees to sign a Security Agreement according to the terms herein. In the event Payoff figures are more than quoted by Purchaser, Purchaser hereby agrees to pay this excess on demand. This order is subject to credit approval and is not binding unless signed by an authorized representative of Seller. All used cars or trucks sold "AS-IS" and without guarantee as to condition, year or model, unless otherwise specified in writing.

PROCEEDS OF LOAN - FROM _____

Amount of Loan _____ FINANCE CHARGE \$ _____

Total Amount of Loan _____ Payable in _____ Installments of \$ _____

NOTICE TO BUYER ON OUTSIDE LOAN - Buyer may be required to pledge security for a loan, which security must be mutually agreed to by Buyer and Lender. Buyer will be obligated for the installment payments on BOTH THE CONDITIONAL SALES CONTRACT (SECURITY AGREEMENT) AND THE LOAN.

NOTICE TO BUYER: Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

SEE OTHER SIDE FOR ADDITIONAL TERMS AND CONDITIONS:

If you are buying a used vehicle with this contract, as indicated in the description of the vehicle above, federal regulation may require a special buyers guide to be displayed on the window. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

Buyer acknowledges that: (1) before signing this agreement Buyer read both sides of this agreement and received a legible, completely filled-in copy of this agreement; and (2) Buyer has received a copy of every other document that Buyer signed during the contract negotiation.

Buyer Sign Here X 44

Buyer Sign Here X _____

Seller AUTO Galler JC

ITEM 674

BPI

NATIONWIDE: (819) 286-7171 • (800) 339-9686 NO. CALIF.: (916) 334-3030 • (800) 296-3316 www.bpiautoforms.com

EXHIBIT C

RECEIPT RECEIPT RECEIPT

DATE AUG 15 / 2011 No. 163281

RECEIVED FROM MOHABIR \$ 300 -

Three hundred dollars DOLLARS

FOR RENT FOR 2002 mitsubishi lancer

ACCOUNT	1621 29
PAYMENT	300
BAL. DUE	1621 29

CASH
MONEY ORDER
CHECK
CREDIT CARD

FROM _____ TO _____
BY _____

Adams 1182

DATE SEP 19 / 2011 No. 163282

RECEIVED FROM MARIA ZAMORA \$ 1000 -

One thousand dollars DOLLARS

FOR RENT FOR 2004 NISSAN XTERRA Payment

ACCOUNT	10771 30
PAYMENT	1000 00
BAL. DUE	9771 30

CASH
MONEY ORDER
CHECK
CREDIT CARD

FROM _____ TO _____
BY _____

Adams 1182

DATE SEP 19 / 2011 No. 163283

RECEIVED FROM VALDEC \$ 300 -

Nine hundred dollars DOLLARS

FOR RENT FOR 2003 BMW 7451 Payment

ACCOUNT	2897 34
PAYMENT	900 00
BAL. DUE	1997 34

CASH
MONEY ORDER
CHECK
CREDIT CARD

FROM _____ TO _____
BY _____

Adams 1182

AG 00007

DATE SEP 19 / 2011 No. 163284

RECEIVED FROM MICHAEL SHANE \$ 600 -

Six hundred dollars DOLLARS

FOR RENT FOR Payment of 08 C 320

ACCOUNT	2561 56
PAYMENT	600 00

CASH
MONEY ORDER

FROM _____ TO _____

RECEIPT

DATE 9/26/2011

No. 163289

RECEIVED FROM IVAN AGUSTIN

\$1000.00

one thousand

DOLLARS

 FOR RENT
 FOR

Payment for old dog gram

ACCOUNT	3158160
PAYMENT	1000.00
BAL. DUE	2158160

 CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____

BY

Rigby

B Adams 1182

RECEIPT

DATE 9/28/2011

No. 163290

RECEIVED FROM PIERCE NEAL HAMILTON

\$500.00

five hundred

DOLLARS

 FOR RENT
 FOR

2001 Chevy Monte Carlo SS VIN# 2G1WKA15KK19537250

ACCOUNT	639762
PAYMENT	500.00
BAL. DUE	589762

 CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____

BY

Deposit will Refundable

Paid by 9/29/2011
Rigby

B Adams 1182

RECEIPT

DATE 10/3/2011

No. 163291

RECEIVED FROM NEAL HAMILTON

\$500.00

five hundred

DOLLARS

 FOR RENT
 FOR

Payment for 2001 Chevy Monte Carlo \$5

ACCOUNT	239534
PAYMENT	500.00
BAL. DUE	1895.34

 CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____

BY

Rigby

B Adams 1182

AG 00008

RECEIPT

DATE OCT 17/2011

No. 163292

RECEIVED FROM MARIA TREJO

\$1000.00

one thousand

DOLLARS

 FOR RENT
 FOR

2004 Nissan Xterra Payment

ACCOUNT	977130
PAYMENT	1000.00
BAL. DUE	877130

 CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____

BY

Rigby

RECEIPT RECEIPT

DATE 11/16/2011 No. 163301

RECEIVED FROM VAIDES MUNOZ \$ 400.00

four hundred DOLLARS

FOR RENT
 FOR Bmw 745i Payment

ACCOUNT	1997	34
PAYMENT	400	00
BAL DUE	1597	34

CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____
BY Jim S

Adams 1182

RECEIPT RECEIPT

DATE 11/18/2011 No. 163302

RECEIVED FROM MARIA \$ 100.00

one thousand dollars DOLLARS

FOR RENT
 FOR 2004 N Terra

ACCOUNT	8771	30
PAYMENT	1000	00
BAL DUE	7,771	30

CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____
BY Jim S

Adams 1182

RECEIPT RECEIPT

DATE 11/18/2011 No. 163303

RECEIVED FROM MICHAEL SHANE LYNCH \$ 100.00

one thousand dollars DOLLARS

FOR RENT
 FOR Payment

ACCOUNT	2261	56
PAYMENT	100	00
BAL DUE	1161	56

CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM _____ TO _____
BY Jim S

Adams 1182

RECEIPT RECEIPT

DATE 11/23/2011 No. 163304

RECEIVED FROM MOU NIR \$ 350.00

three hundred fifty dollars DOLLARS

FOR RENT
 FOR 1998 lexus

ACCOUNT	52901	11
PAYMENT	350	00
BAL DUE	121	11

CASH
 MONEY ORDER
 CHECK

FROM _____ TO _____
BY Jim S

RECEIPT

DATE	12/29/11	No. 163313	
RECEIVED FROM	Vito	\$	DOLLARS
O FOR RENT O FOR			
ACCOUNT		CASH	FROM _____ TO _____
PAYMENT		MONEY ORDER	BY _____
BAL. DUE		CHECK	
		CREDIT CARD	

B-1 Adams 1182

RECEIPT

DATE	12/31/2011	No. 163314	
RECEIVED FROM	MAPCO A. BRICEÑO	\$ 200	DOLLARS
Two hundred dollars			
O FOR RENT O FOR 200 Mercedes Deposit			
ACCOUNT		CASH	FROM _____ TO _____
PAYMENT	200 .00	MONEY ORDER	BY _____
BAL. DUE		CHECK	
		CREDIT CARD	

Deposit NonRefundable
B-1 Adams 1182

RECEIPT

DATE	Jan 4/2012	No. 163315	
RECEIVED FROM	JACQUARI, CAVANAGH	\$ 2500 .00	DOLLARS
Twenty five hundred			
O FOR RENT O FOR Deposit for 02 CLK 430.			
ACCOUNT	3500 .00	CASH	FROM _____ TO _____
PAYMENT	2500 .00	MONEY ORDER	BY _____
BAL. DUE	1000 .00	CHECK	
		CREDIT CARD	

Deposit NonRefundable
B-1 Adams 1182

AG 00010

DATE	Jan 18/2012	No. 163316	
RECEIVED FROM	MARIA	\$ 500 .00	DOLLARS
Five hundred			
O FOR RENT O FOR payment for car XTERA			
ACCOUNT	7771 .39	CASH	FROM # 105 DUC01/13/2012 TO _____
PAYMENT	500 .00	MONEY ORDER	BY _____
BAL. DUE	7771 .39	CHECK	
		CREDIT CARD	

DATE

1/16/12

No. 163329

\$661.30

RECEIVED FROM

MARCO BRICEÑO

sixty six dollars and 38/100⁰⁰

DOLLARS

FOR RENT

FOR

ACCOUNT

6739 00

CASH

MONEY

ORDER

CHECK

CREDIT

CARD

PAYMENT

661 38

FROM

TO

BAL DUE

807 62

BY

check # 119

B: Adams 1182

RECEIPT

RECEIPT

RECEIPT

RECEIPT

No. 163330

DATE

Feb 13/2012

\$500.00

RECEIVED FROM

HERRIOT CHIRESEL

Five hundred dollars

DOLLARS

FOR RENT

FOR

2001 Honda Passport

Deposit Non Refundable

ACCOUNT

7674 01

CASH

MONEY

ORDER

CHECK

CREDIT

CARD

PAYMENT

500 00

FROM

TO

BAL DUE

7174 01

BY

B: Adams 1182

No. 163331

DATE

2/14/2012

\$300.00

RECEIVED FROM

ERICK

Three hundred dollars

DOLLARS

FOR RENT

FOR

2001 LINCOLN LS

ACCOUNT

1365 91

CASH

MONEY

ORDER

CHECK

CREDIT

CARD

PAYMENT

300 00

FROM

TO

BAL DUE

1065 91

BY

B: Adams 1182

AG 00011

No. 163332

DATE

2/15/2012

\$480.00

RECEIVED FROM

MARIA

Forty two hundred

DOLLARS

FOR RENT

FOR

2004 NISSAN XTERRA

ACCOUNT

7271 34

CASH

MONEY

ORDER

CHECK

CREDIT

CARD

PAYMENT

480 00

FROM

TO

BAL DUE

301 34

BY

B: Adams 1182

RECEIPT

DATE 4/4/2012 No. 163357

RECEIVED FROM MARIA \$ 500 -

Five hundred dollars DOLLARS

FOR RENT FOR Payment FOR 2004 NISSAN VITERRA

ACCOUNT	<u>1571 30</u>	<input type="radio"/> CASH	<u>\$1500 TOTAL (\$400 Cash)</u>
PAYMENT	<u>500</u>	<input type="radio"/> MONEY ORDER	<u>\$100 Check #122</u>
BAL. DUE	<u>1071 30</u>	<input type="radio"/> CHECK	<u>BY</u> <u>JM</u>
		<input type="radio"/> CREDIT CARD	

Boatman 1182

RECEIPT

DATE April 4/4/2012 No. 163358

RECEIVED FROM MARCO \$ 661 -

Six hundred sixty one dollars and 38/100 DOLLARS

FOR RENT FOR 03 Mercedes \$130

ACCOUNT	<u>7535 27</u>	<input type="radio"/> CASH	FROM
PAYMENT	<u>661 38</u>	<input type="radio"/> MONEY ORDER	TO
BAL. DUE	<u>6,873 60</u>	<input type="radio"/> CHECK	<u>By</u> <u>JM</u>
		<input type="radio"/> CREDIT CARD	

Boatman 1182

RECEIPT

DATE April 5/2012 No. 163359

RECEIVED FROM ALFONZO \$ 500 -

Five hundred dollars DOLLARS

FOR RENT FOR 03 Mercedes \$500 Down Payment

ACCOUNT	<u>1000 00</u>	<input type="radio"/> CASH	FROM
PAYMENT	<u>500 00</u>	<input type="radio"/> MONEY ORDER	TO
BAL. DUE	<u>500 00</u>	<input type="radio"/> CHECK	<u>By</u> <u>JM</u>
		<input type="radio"/> CREDIT CARD	

Boatman 1182

AG 00012

RECEIPT

DATE 4/13/2012 No. 163360

RECEIVED FROM ALFONZO \$ 500 -

Five hundred dollars DOLLARS

FOR RENT FOR 03 Mercedes

ACCOUNT	<u>500 00</u>	<input type="radio"/> CASH	FROM
PAYMENT	<u>500 00</u>	<input type="radio"/> MONEY ORDER	TO
		<input type="radio"/> CHECK	<u>By</u> <u>Damon</u>
		<input type="radio"/> CREDIT CARD	